

The complaint

Mrs P complains about how Santander UK Plc handled a dispute she raised with it.

What happened

The parties are familiar with the background details of this complaint – so I will briefly summarise them here. It reflects my informal remit.

Mrs P paid a supplier a deposit for the build of a new conservatory using her Santander credit card.

Mrs P was not happy with the supplier's actions. She says the service was not received as promised and the supplier cancelled the build without her knowledge. She wants a full refund of her deposit.

Mrs P was unable to resolve her dispute with the supplier so she approached Santander which raised a chargeback dispute. However, it was not able to recover her deposit.

Our investigator thought that Santander had provided poor customer service to Mrs P and recommended it pay her an additional £200 compensation for its claim handling to add to the £200 it had already offered her in respect of her most recent complaint about the outcome of her claim. However, she did not consider it fair that Santander refund the deposit.

Santander agreed with the proposal but Mrs P did not. In summary, she says that had Santander got back to her in a timely manner regarding her claim it would have enabled her to better pursue the supplier directly for a refund. She also says it failed to properly inform her about the possibility of taking the chargeback further, nor did it take it further, which has disadvantaged her.

To resolve the complaint Mrs P wants Santander to pay her the amount which the supplier offered and £1,000 in compensation for distress and inconvenience caused.

The matter has now come to me to make a final decision on.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes informally.

I am sorry to hear about the trouble Mrs P has had with the supplier. However, it is worth noting that Santander is not the provider of building services here. In deciding if Santander has acted fairly I am looking at its role as a provider of financial services only in handling any claim made to it. In that respect I consider that Section 75 and the chargeback scheme are particularly relevant here as they provide ways the financial business can assist with the dispute. So it is these I have focused on in deciding if Santander needs to do more here.

Section 75 and Section 75a do not apply

It appears Santander and our investigator have explained to Mrs P why Section 75 of the Consumer Credit Act 1974 ('Section 75') does not apply here. And from what I understand Mrs P accepts this - so I don't consider it necessary to go into a lot of detail.

However, in summary, I agree that Section 75 doesn't apply here because the contractual cash price for the total service agreed with the supplier is in excess of £30,000. And although Section 75a of the Consumer Credit Act 1974 applies in some situations where the total price exceeds £30,000 – this is not the case where the credit is provided by way of a credit card (as it is here).

So, when considering how Santander handled the claim – I don't think it acted unreasonably in not pursuing a Section 75 or Section 75a investigation further – because these do not apply here.

Chargeback

Chargeback is a way which Santander can dispute charges on behalf of its customers. But it isn't guaranteed to work or mandatory to raise one. However, in a dispute where there is a reasonable prospect of success I consider it good practice to at least make an attempt at a chargeback. I understand the Mastercard rules apply to this case so it is these I have considered here. However, I don't consider my reasoning would differ if it were Visa.

I can see that Santander considered and attempted a chargeback on Mrs P's behalf. It appears to have used a reason code relating to 'not as described/defective' goods or services. Based on the nature of the dispute this does not appear to be an unreasonable way forward in the first instance. I know Mrs P has said she told Santander it was a service that had not been provided rather than a defective service (and I can see this was ticked on the disputed transaction form). I think it is arguable either way, however, considering the points I have noted below I don't think this would have made a difference to the supplier's defence (as it claims Mrs P received services up to the point she cancelled) or the likelihood of success in any event.

I can see the supplier robustly defended the chargeback across several documents including a detailed timeline. It did not accept it was at fault or that a refund was due through the chargeback process. And based on this Santander discontinued the chargeback.

On the face of it this does not seem to be an unreasonable course of action by Santander. However Mrs P has pointed out that Santander should have taken the chargeback further, even pro-actively, or by giving Mrs P better information about the process so she could provide it with further information to facilitate an appeal and show the supplier was wrong (and that it hadn't made good on the offer it made).

I acknowledge what Mrs P is saying here – and I can see why she feels that Santander potentially deprived her of a chance to have a successful chargeback. However, even if I accepted that Santander could have provided Mrs P with more information and progressed matters I am not persuaded that a continued chargeback (whether raised as a defective service, service not provided, or a credit not processed) would have likely succeeded in any event. I say this because:

- The supplier provided a robust and detailed rebuttal to Mrs P's account so it seems unlikely it would then have conceded the chargeback at a second

presentment - meaning the matter would have to be pushed to arbitration for a decision by the card scheme;

- Had the matter got to arbitration it is not clear what the card scheme would have done. However, I am not persuaded the evidence shows that the card scheme would likely have ruled in Mrs P's favour – noting in particular here that:
 - This is a high value, long running and complex dispute – with robust and conflicting allegations on either side (including on even basic matters such as which party cancelled);
 - In this instance, this high value claim is based on testimony - there is a lack of independent evidence to assist the card scheme in making a decision and it is unable to summon witnesses or further evidence like a court would;
 - The offer by the supplier is described as a 'goodwill' and 'full and final' settlement offer rather than a refund/credit validly due under the contract – the supplier in its defence documents appears to have maintained that under the strict reading of its contract Mrs P is not due back any refund due to the work carried out to date which exceeds the value of the deposit (and I note the contract does include sections allowing the supplier to retain 25%-80% of the total contract price depending on the stage).

So while I can understand that Mrs P thinks Santander could have done more in the way it informed her and/or progressed the chargeback I don't think there is persuasive enough evidence to say that Santander's actions have on balance caused her to unfairly lose out here through the chargeback process in any event.

I note the supplier did go into liquidation at a later stage – but from what I can see this appears to have occurred too late to have been a factor in the timeframes for the chargeback process Santander initiated (even if it were continued). I think Mrs P accepts this. However, considering the nature of the previous defence submitted by the supplier – it isn't guaranteed that a chargeback would have succeeded in these circumstances in any event – noting the evidential challenges already described and the fact that the liquidator could have maintained the supplier's defence.

Customer service

It is worth noting here that Mrs P made a previous complaint to Santander before the claim had concluded about her difficulties uploading documents during the claim - which resulted in her receiving £75 from it. This was dealt with in a separate and earlier final response letter from Santander and is not the subject matter of the complaint I am looking at here. However, I have considered the other events surrounding the claim and the customer service Mrs P has described.

All parties agree that Mrs P did not receive good customer service from Santander during its handling of her claim. Mrs P has given a compelling and credible account of poor communication from Santander, delays, and misinformation – in particular she says a specific member of staff gave her the impression her chargeback was being continued when this was not the case.

Mrs P has described her frustration in detail and the many calls she has made where she felt she was repeating herself, or constantly clarifying to Santander. For example, where she had to point out her claim was a chargeback and not a Section 75. It also appears Santander did not provide her with a clear explanation of the chargeback process, rationale for the reason code taken forward or any potential escalation process and timeframes for this.

And while I don't think this poor customer service made a difference to the chargeback outcome – I can see how frustrating it would be for Mrs P to experience.

It would be particularly upsetting for Santander to wrongly indicate that the chargeback was being progressed further– which would raise Mrs P's hopes and expectations. I am persuaded this likely happened here. Mrs P has given a credible account of what she was told by a particular agent about an appeal being raised and how she waited around only to be told that wasn't the case. Her follow up correspondence to Santander supports this account where she is clearly under the impression an appeal is taking place and also mentions how this particular agent helped her progress this. Santander's final response also mentions a claim being appealed and declined again – which is somewhat misleading in the circumstances and would appear to be more about an internal review than a representation of the chargeback.

I don't think Santander knowingly mis-led Mrs P to avoid taking the matter further as she asserts, it seems likely this was poor communication and service here. However, it clearly had a significant impact on Mrs P and caused her a lot of upset.

When assessing the impact of the situation on Mrs P I note a particular letter she sent to Santander where she describes her frustration with what she understood to be a chargeback appeal process. She says she has spent hours on the phone and describes how stressful the task is and how she feels people at Santander are not listening to her. I think Santander could have avoided this if it had been clear with Mrs P about its actions, and the chargeback process including any time limits or restrictions on continuing a claim.

I know that Mrs P has indicated Santander's delays had an impact on her overall ability to take other action against the supplier and get her refund before it went into liquidation. While I accept there were periods of delay I don't think Santander took an excessive time to handle the initial claim attempt which resulted in Mrs P finding out the supplier was not conceding the chargeback. But in any event I don't think it would be reasonable to conclude here that Santander's customer service prevented Mrs P recovering money from the supplier by other means. I think from a causation perspective this is too remote also factoring in the uncertainty that alternative action against the supplier would have been successful in any event. I also don't consider Santander's actions reasonably prevented Mrs P from seeking legal advice and taking alternative action to recover the money in the circumstances if she wanted (and it appears she had taken steps to do this by instructing a lawyer).

With my conclusion above in mind any compensation here isn't intended to reimburse Mrs P for a missed opportunity to get her money – but for the frustration caused by the delays and other customer service issues experienced from Santander's handling of the claim.

Deciding an appropriate level of compensation for distress and inconvenience is not a science. However, I have looked at our scale of awards for distress and inconvenience as described on our website and thought about the specific circumstances here in order to decide what is fair. I think Santander's errors have caused Mrs P more than the levels of frustration that she would expect from day to day life and the impact has been more than minimal. I am persuaded that along with several smaller errors there has been a larger mistake in the information Santander gave Mrs P about the progress of her chargeback after it was defended, the impact of which I am persuaded caused her considerable distress.

However, in deciding a fair award I note the distress suffered by Mrs P in relation to this issue naturally also stems from the original dispute and dissatisfaction with the supplier – rather than Santander. And while Santander's customer service issues did not help here, it is not responsible for causing the underlying dispute which has caused Mrs P so much distress. While I am sorry to hear about the distress the dispute with the supplier has caused

it also mitigates the level of any award here against Santander for distress and inconvenience.

I note Santander originally offered Mrs P £200 compensation for distress and inconvenience in respect of this complaint and our investigator recommended another £200. Santander agreed to this. So overall this will raise the compensation to an award of £400 which is a significant amount, and at the upper region of what I would consider fair here.

Putting things right

I think it fair that Santander pay Mrs P the £400 compensation it has agreed to settle this matter. It might have already paid her £200 of this in respect of its previous offer. If this is the case and Mrs P accepts my decision it should pay her the remaining £200.

My final decision

I direct Santander UK Plc to pay Mrs P £400 compensation in respect of its claims handling (or £200 if it has already paid Mrs P the £200 it initially offered).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 1 July 2024.

Mark Lancod
Ombudsman